

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

LEXINGTON INSURANCE COMPANY and  
NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH,

Plaintiffs,

v.

VIRGINIA SURETY COMPANY, INC.

Defendant.

Civil Action No. 04-11109 RGS

**NOTICE OF CROSS-APPEAL**

Defendant Virginia Surety Company (“Virginia Surety”) hereby gives notice of its cross-appeal of the Memorandum and Order on Cross-Motions for Summary Judgment entered on May 3, 2007 (“Summary Judgment Order”). Specifically, Virginia Surety cross-appeals the District Court’s denial of Virginia Surety’s alternative claim for relief, *i.e.*, that plaintiffs are obligated to reimburse Virginia Surety for 100% of all defense costs and indemnity payments to the extent they exceed \$250,000 per claim, plus interest.

Virginia Surety believes that Plaintiff's Notice of Appeal is premature and will move to dismiss the appeal once it is docketed. This Notice of Cross-Appeal is filed at this time in order to preserve Virginia Surety's appellate rights in the event the Court of Appeals rules that the District Court's Summary Judgment Order is immediately appealable and denies the Motion to Dismiss Appeal.

Respectfully submitted,

VIRGINIA SURETY CO., INC.,

By its attorneys,

/s/ John M. Stephan

Joseph G. Blute (BBO 047300)

John M. Stephan (BBO 649509)

Nicholas C. Cramb (BBO 654368)

**MINTZ, LEVIN, COHN, FERRIS,  
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Dated: June 14, 2007

**Certificate of Service**

I, John M. Stephan, Esq., hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on the date hereof.

/s/ John M. Stephan

Dated: June 14, 2007

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